IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Bail Appl..No. 5530 of 2007()

CMP.1789/2006 of J.M.F.C.,MALAPPURAM
CRIME NO.113/06 OF VAZHAKKAD POLICE STATION

.....

PETITIONER/ACCUSED:

USMAN, AGED 26 YEARS,
S/O. MUHAMMED, CHETTIYARTHODI, VALLAPPUZHA POST,
OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
VAZHAKKAD POLICE STATION (MALAPPURAM DISTRICT)
THROUGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5530 OF 2007

Dated this the 18th day of September, 2007

ORDER

Application for regular bail. The petitioner faces allegations under Sec.376 of the IPC. The alleged incident took place in September, 2004. The victim is a girl born on 16/11/89. It is alleged that the petitioner had sexual intercourse with the victim. She became pregnant. She gave birth to a child on 18/6/05. A private complaint was filed on 25/4/06. The same was referred to the police under Sec.156 (3) of the Cr.P.C. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The long delay in filing the complaint must itself suggest that the allegations are false or at least that the sexual intercourse was not without consent.

In these circumstances, anticipatory bail may be granted to the petitioner, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. Even if the arguments that the sexual intercourse was with consent of the victim girl were accepted in toto, that cannot be a defence to the allegation of rape as consent of a girl who has not crossed the age of 16 is irrelevant in a prosecution under Sec.376 of the IPC. I am satisfied, in these circumstances, that there is absolutely no necessity to invoke the extraordinary equitable discretion under Sc.438 of the Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must resort to the normal and ordinary course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail.

5. In the result, this bail application is dismissed; but with

the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge